

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT SCOTT SOUPAL,

Plaintiff-Appellant,

v

LAURA LEE SOUPAL,

Defendant-Appellee.

UNPUBLISHED

March 13, 2008

No. 274779

Saginaw Circuit Court

LC No. 04-054695-DM

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce, challenging the trial court's distribution of property, a spousal support award, and an award of attorney fees to defendant. We affirm.

Plaintiff and defendant were married for approximately four years, and they had one child during their marriage. Defendant had another child from a prior marriage. The record indicated that at the time of trial, plaintiff was employed with an income of approximately \$70,000 per year, while defendant was disabled and received Social Security payments for herself and her children. Based on the income disparity between the parties and on defendant's medical conditions, the trial court awarded a greater percentage of the marital assets to defendant. Also bearing on the court's ruling was its finding that plaintiff did not help with family responsibilities, leaving them instead to the disabled defendant, and the court indicated that the division of assets was unequal in recognition of the parties' conduct. The court heard testimony that plaintiff had a drinking problem, was extremely cruel towards defendant, and had told defendant that he wanted her to die.¹

Plaintiff challenges the unequal distribution, claiming first that the trial court erred in finding that the approximately \$53,000 in the parties' bank account represented defendant's separate premarital asset. This Court reviews the trial court's findings of fact relative to the

¹ While the court also heard from plaintiff that defendant had an anger control problem, we defer to the court's assessment of witness credibility. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997).

distribution of property for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). “If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts.” *Id.* at 151-152.

In *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997), this Court made the following observations regarding property division:

[T]he trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets. This distinction between marital and separate estates has long been recognized in this state. Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party. [Citations omitted.]

We find that the record supports the trial court's determination that the joint bank account actually represented defendant's premarital asset, separate from the marital estate. The parties had deposited approximately \$72,000 into that account when they sold a house that defendant had purchased from her grandparents prior to the marriage. The record indicates that the gain on the sale was due at least in part to the favorable purchase price defendant's grandparents had given her, and plaintiff presented no evidence that the house appreciated in value during the marriage. Moreover, the record shows that defendant made the down payment on the house and paid a substantial portion of the balance prior to the marriage. Accordingly, the proceeds from the house sale constituted a separate premarital asset held by defendant, and the trial court properly treated the remaining balance in the joint account as the proceeds of the house sale.

Plaintiff next argues that the trial court erred in awarding plaintiff's retirement accounts to defendant in the property distribution. Premarital pension benefits may be included in a property distribution. *Pickering v Pickering*, 268 Mich App 1, 8; 706 NW2d 835 (2005). Here, the trial court determined that absent the retirement accounts, the marital estate would be insufficient to support defendant and the child of the marriage. As such, the trial court was justified in awarding the accounts to defendant as part of the property distribution. MCL 552.23(1); *Reeves, supra* at 494 (statute allows invasion of separate assets when one party demonstrates additional need).

With respect to the overall property distribution, although the trial court awarded defendant a larger percentage of the marital estate, the court's dispositive ruling was fair and equitable in light of the facts presented.² See *Sparks, supra* at 159-160 (reciting relevant factors in dividing property). While plaintiff has calculated percentages in regard to the property

² We note that the trial court, after issuing a written opinion following the divorce trial, held numerous hearings in which the court gave both parties great latitude to air arguments concerning the opinion and other related matters. By the time the judgment of divorce was finally entered, the court had given the case a great deal of time and attention, and it is evident that the court carefully contemplated all of the parties' arguments and concerns.

division, much of it is problematic, and we decline to engage in an arithmetic analysis of the property distribution. Reversal is unwarranted.

The judgment of divorce also provides that plaintiff shall pay spousal support in the form of COBRA insurance medical benefits in the amount of \$349 per month for a period not to exceed 18 months. The law of spousal support and its application to this case cannot be found in plaintiff's brief. The entire argument is essentially encapsulated in the statement of questions presented, i.e., it was inequitable. Limiting ourselves to that issue, we disagree.

The trial court initially indicated that it had awarded the retirement accounts to defendant in lieu of spousal support, but after a motion to reopen proofs the court decided to award spousal support to defendant in addition to the retirement accounts.

The purpose of spousal support is to balance the needs and incomes of the parties in such a way as to not impoverish either party. *Korth v Korth*, 256 Mich App 286, 289; 662 NW2d 111 (2003). "Spousal support is to be based on what is just and reasonable under the circumstances of the case." *Id.* We find that the court's judgment granting defendant COBRA insurance medical benefits in the amount of \$349 per month for 18 months is just and reasonable under the circumstances of the case.

Finally, plaintiff appears to challenge the award of \$4,300 in attorney fees to defendant. The issue is not contained in the statement of questions involved, MCR 7.212(C)(5), and the law of attorney fees relative to divorce actions and its application to this case is absent from plaintiff's brief. The full extent of the argument is that there was no basis in fact for awarding defendant attorney fees.

"This Court reviews a trial court's grant of attorney fees for an abuse of discretion." *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007). Underlying findings of fact are reviewed for clear error. *Id.* An award of attorney fees in a divorce action is appropriate when a party is unable to bear the expense of the litigation and the other party is able to pay. MCR 3.206(C)(2)(a). Here, defendant provided specific information demonstrating that she was unable to bear the costs of the divorce action, and the record indicates that plaintiff was able to cover the costs. There was no clear error with respect to the court's factual findings, nor an abuse of discretion in awarding defendant attorney fees.

Affirmed.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Pat M. Donofrio